Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
City of Bainbridge Island, Washington	)	File No. 0007083089
	)	
Request for Waiver of Section 90.242(b)(4)(iv)	)	
Of the Commission's Rules	)	

ORDER

Adopted: February 22, 2017 **Released: February 22, 2017**

By the Acting Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On January 5, 2016, the City of Bainbridge Island, Washington (Bainbridge, or the City) filed an application and waiver request to modify its Travelers Information Station (TIS) WQVI729 by correcting the coordinates of its transmitter site, eliminating use of frequency 1700 kilohertz, and expanding its service area.[1] Bainbridge's TIS operates on frequency 600 kilohertz in the AM radio band. Bainbridge requests a waiver of Section 90.242(b)(4)(iv) of the Commission's rules, which imposes a 2 mV/m field strength limit at 1.5 kilometers from TIS transmitters,[2] so that it may expand its 2 mV/m service contour up to 2.9 kilometers from the transmitter.[3] The City plans to maintain the power of the station at ten watts, the maximum power level permitted for TIS conventional antennas under the Commission's rules.[4] For the reasons we discuss herein, we grant the request for waiver.

II. BACKGROUND

2. Bainbridge is located to the west of the City of Seattle, Washington across Puget Sound, measures 27 square miles, and has a population of 23,000.[5] Its only connection to the Kitsap County's mainland is a two-lane bridge on the north side of the island.[6] The City depends on ferry service for direct access to both Seattle and King County.[7] Unloading of vehicles from ferries creates "heavy surge [of vehicles] onto the island's roadways," most of which are en route to the two-lane bridge to access the Kitsap and Olympic Peninsulas.[8] The City reports that the surges routinely jam State Road 305, resulting

[1] File No. 0007083089 (filed Jan. 5, 2016, as amended Feb. 3, 2016), attached "Attachment 1" and "WQVI-729 WAIVER REQUEST" (Waiver Request). *See also* Attachment 1 at 1.

[2] 47 CFR § 90.242(b)(4)(iv). "The field strength of the emission on the operating frequency shall not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 km (0.93 miles) from the transmitting antenna system." *Id*.

[3] Attachment 1 at 1.

[4] 47 CFR § 90.242(b)(4)(iii).

[5] File No. 0007083089, attached Letter from Douglas Schulze, City Manager, City of Bainbridge Island, to "Whom It May Concern," dated Oct. 22, 2015 (Letter) at 2.

[6] *Id*.

[7] *Id*.

[8] *Id*.

in lengthy traffic delays on the north end of the island.[9] Bainbridge states that the island is susceptible to winter storms, earthquakes, flooding, landslides, pandemics, nuclear contamination, lengthy power outages, and terrorism associated with the ferry route.[10] With limited means of evacuation that are vulnerable to disruption, Bainbridge asserts that it is susceptible to complete isolation.[11] The City uses its single-transmitter TIS to "provide critical information to area motorists in an emergency or a time of imminent danger" and to "provide ferry service [information], traffic, road construction and other traveler information to motorists on a daily basis."[12] "[B]ecause this Travelers Information Station would operate on a generator and because all automobile radios operate by virtue of the automobile alternator/battery, emergency-related communication service to citizens can be maintained" when power outages affect other communications.[13]

3. Bainbridge argues that "intent of this service is to serve the public interest thru the broadcast of daily Traveler Information Service (TIS) allowed content and to protect life and property of motorists in on [sic] Bainbridge Island and surrounding areas in times of emergency and imminent danger. On a daily basis, this may include, for example, the broadcast of information related to travel and traffic hazards due to ferry schedule disruption and road construction and the resulting detours, directions for visitors to make travel more efficient and traffic information for all drivers so they may avoid congestion. In an emergency, and especially in an event which would snarl traffic crossing the one bridge to the mainland or disrupt electrical service to residents, this station would be critical as a conduit to provide all manner of local information to protect life and property."[14]

4. Bainbridge asserts that its TIS with signal limited to 2.0 mV/m at 0.93 miles does not meet a critical need to have TIS reach all of the island's roadways due to the island's 10-mile north-to-south length.[15] The City avers that building multiple synchronized TIS locations would cost more than operating a single location due to additional transmitters, antennas, synchronization equipment, and audio distribution gear.[16] Bainbridge further argues that in a multi-transmitter configuration, areas midway between transmitters could experience inter-transmitter audio distortions, which affect intelligibility and are counterproductive to the communication effort.[17] Bainbridge maintains that a single TIS transmitter with a larger 2.0 mV/m contour would cover the island, avoid the cost and distortion issues, and allow continued operation of the station using the propane-fueled generator should power outages occur.[18]

5. The City argues that "[a]pplying rule 90.242(b)(4)(iv) to this TIS service will not further the underlying purpose of the rule because the interference to broadcasters will not occur with the relaxation of the 2.0 mV/m limitation from 1.5 km to 2.9 km."[19] Bainbridge further states that "[e]nforcement of rule 90.242(b)(4)(iv) would also have the unintended effect of increasing the cost of providing the service to the public because a minimum of three TIS stations and the addition of synchronization equipment would be required, roughly quadrupling the cost of one station, to cover the

[9] *Id*.

[10] Letter at 1.

[11] *Id*.

[12] Letter at 2.

[13] Attachment 1 at 1.

[14] *Id.*

[15] Letter at 2.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 3.

[19] Attachment 1 at 1.

same service area."[20] The City argues that "[t]he intent of the rule is not to add a cost burden to the budgets of local agencies whose responsibility it is to inform the traveling public and protect life and property."[21]

6. In support of its request for waiver, Bainbridge states, "it doesn't appear that the proposed operating facilities will result in interference to any other station requiring protection consideration."[22] Bainbridge asserts that the only station close enough to require evaluation is Station CKBD, Vancouver, British Columbia, which is authorized co-channel with Bainbridge at 600 kilohertz.[23] Bainbridge states that the US/Canadian working arrangement does not prohibit interference to Canadian facilities outside the boundaries of Canada, and notes that its TIS transmitter is located more than 130 kilometers from the nearest point of Canadian land.[24]

III. DISCUSSION

7. Section 1.925(b)(3) of the Commission's rules provides that: "the Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."[25] An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[26] Based on the information before us, we are persuaded that Bainbridge has demonstrated that a waiver of Section 90.242(b)(4)(iv) is warranted.

8. When the Commission adopted the TIS rules, it stated that TIS "is intended to serve a 3 km zone with generally repetitive information pertinent to travelers."[27] In limiting the TIS coverage zone, the Commission primarily was motivated to minimize the potential for TIS to cause interference to broadcast stations.[28] The Commission therefore adopted rules to limit the measured field strength at 1.5 kilometers from the transmitting site, limit the maximum antenna height, and limit the transmitter output power to ten watts.[29] The Commission stated that "considering the likelihood of interference to broadcast

[20] Attachment 1 at 1-2.

[21] Attachment 1 at 2.

[22] Waiver Request at 1.

[23] *Id*.

[24] *Id*. at 1-2. *See* Agreement Between the Government of the United States of America and the Government of Canada Relating to the AM Broadcasting Service in the Medium Frequency Band, Ottawa, 1984 (available at https://transition.fcc.gov/ib/sand/agree/can_broad_agree.html).

[25] 47 CFR § 1.925(b)(3).

[26] *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp*., Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

[27] Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, *Report and Order*, 67 F.C.C.2d 917, 925 para. 27 (1977) (*TIS Report and Order*).

[28] *Id*. at 924 para. 25.

[29] *Id.* at 926 para. 31.

stations, these steps should prevent interference situations from developing without unduly burdening TIS applicants."[30]

9. In accordance with our TIS spacing rules,[31] Bainbridge's TIS transmitter is not located within 130 kilometers of the predicted daytime 0.5 mV/m contour of any co-channel AM station or within 15 km of the predicted daytime 0.5 mV/m contour of any first adjacent channel AM station. We find that the City's proposal to expand its contour from 1.5 km to 2.9 km, while continuing to abide by applicable transmitter height and power limits, would protect broadcast operations from potential harmful interference, consistent with the underlying purpose of Section 90.242(b)(4)(iv). Therefore, we find that the underlying purpose of the rule would not be served or would be frustrated by application to the present case.

10. We further find that the proposed expansion of Bainbridge's TIS service area while keeping output power at ten watts will enable the City to better inform travelers of road and travel conditions throughout the island and to alert citizens more effectively in the event of emergencies stemming from hazards to which Bainbridge is susceptible. Based on the record before us, we find that a grant of Bainbridge's request for waiver would serve the public interest. Therefore, we conclude that Bainbridge satisfies the Commission's waiver criteria.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver of the City of Bainbridge Island, Washington, filed on January 5, 2016, IS GRANTED.

12. IT IS FURTHER ORDERED, that application File No. 0007083089, filed by the City of Bainbridge Island, Washington, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

13. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Acting Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

[30] *Id.* at 924 para. 25.

[31] 47 CFR § 90.242(a)(2).